



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/826,664	04/17/2004	Martin Baecke		9575

23616 7590 12/28/2004

LAW OFFICES OF CLEMENT CHENG  
17220 NEWHOPE STREET #127  
FOUNTAIN VALLEY, CA 92708

EXAMINER

PATEL, NIHIR B

ART UNIT PAPER NUMBER

3743

DATE MAILED: 12/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

66

<b>Office Action Summary</b>	Application No. 10/826,664	Applicant(s) BAECKE, MARTIN	
	Examiner Nihir Patel	Art Unit 3743	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on April 17<sup>th</sup>, 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☐ Claim(s) \_\_\_\_\_ is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Miller US Patent No. 5,916,493. Referring to claim 1, Miller discloses a humidifier system that comprises a storage tank 16 for a liquid (see figures 1 and 2); and a casing (see figure 2); an opening on the storage tank 16 largely imperviously closing with a portion of the casing ( see figure 2).

Referring to claim 2, Miller discloses an apparatus wherein there is a position at which the edge of the opening of the storage tank 16 is spaced away from the portion of the casing farther than usual (see figure 2).

Referring to claim 3, Miller discloses an apparatus wherein the storage tank 16 is made of one piece (see figures 1 and 2).

Referring to claim 6, Miller discloses an apparatus wherein the casing is constructed such that, when the storage tank is installed and at least partially filled with liquid, a thin liquid layer is formed in the casing next to the opening of the storage tank (see figures 1 and 2), above which gas can be passed along (see figure 1 and 2).

Referring to claim 9, Miller discloses an apparatus wherein the evaporator further comprises a bottom part having an electrical terminal connected to the casing by a spike and a catch (see figures 1 and 2).

Art Unit: 3743

Referring to claim 13, Miller discloses an apparatus that comprises a storage tank 16 for a liquid (see figures 1 and 2) with an opening, wherein the opening forms a substantially even rim with a notch (see figures 1 and 2).

Referring to claim 14, Miller discloses an apparatus that comprises a casing for an evaporator for accommodating a storage tank 16, wherein the casing comprises a portion formed such that it substantially imperviously closes with an opening of the storage tank (see figures 1 and 2).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4, 5, 7 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miller US Patent No. 5,916,493 in view of Wood et al. US Patent No. 4,676,237. Referring to claims 4, 5, 7 and 12, Miller discloses the applicant's invention as claimed with the exception providing a seal that is arranged between the casing and the storage tank so as to produce a gas-proof connection between the casing and the storage tank. Wood discloses an inhaler device that does provide a seal that is arranged between the casing and the storage tank so as to produce a gas-proof connection between the casing and the storage tank. Therefore it would have been obvious to modify Miller's invention by providing a seal that is arranged between the casing and the storage tank so as to produce a gas-proof connection between the casing and the storage tank in order for the invention to work to its fullest capability.

Referring to claim 8, the applicant claims that the heater is made of a PTC resistor. When reviewing the applicant's specifications the examiner found no criticality on why the heater must be made of PTC resistor. Therefore the examiner came to a conclusion that the heater used in Miler's invention would achieve the same results as the PTC resistor as claimed in claim 8.

Referring to claim 10, the applicant claims that the evaporator further comprises a bottom part having an electrical terminal detachably connected to the casing by a spike and a catch, the electric contact between the heater and the electrical terminal being produced via contact surfaces on the casing and contact spring pins in the bottom part. When reviewing the applicant's specification the examiner found no criticality on why the electric contact between the heater and the electrical terminal must be produced via contact surfaces on the casing and contact spring pins in the bottom part. Therefore the examiner came to a conclusion that the method used in Miler's invention would achieve the same results as the method described in claim 10.

Referring to claim 11, the applicant claims that the evaporator further comprises a bottom part having an electrical terminal detachably connected to the casing by a spike and a catch, the electric contact between the heater and the electrical terminal being produced via plugs mechanically connected to the upper part and sockets arranged in the bottom part in a hidden manner. When reviewing the applicant's specification the examiner found no criticality on why the electric contact between the heater and the electrical terminal must be produced via plugs mechanically connected to the upper part and sockets arranged in the bottom part in a hidden manner. Therefore the examiner came to a conclusion that the method used in Miler's invention would achieve the same results as the method described in claim 11.

Art Unit: 3743

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communication from the examiner should be directed to Nihir Patel whose telephone number is (571) 272-4803. The examiner can normally be reached on Monday-Friday from 7:30 am to 4:30 pm. If attempts to reach the examiner by telephone are unsuccessful the examiner supervisor Henry Bennett can be reached at (571) 272 4791.

NP  
December 14<sup>th</sup>, 2004

  
Henry Bennett  
Supervisor, Patent Examiner  
Group 2700